In the Matter of Arbitration Between IBEW, Local 160 [Ranvek] and Steele-Waseca Cooperative Electric

OPINION AND AWARD

FMCS Case No. 01-0905-12617-7

GRIEVANCE ARBITRATION #2

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of IBEW, Local 160
Richard A. Williams, Jr., Esq.
Williams & Iverson
Roseville, MN

On behalf of Steele-Waseca Cooperative Electric
Sabin S. Peterson, Esq.
Employer's Association, Inc.
St. Paul, MN

JURISDICTION

In accordance with the agreement between Steele-Waseca Cooperative Electric, Owatonna, Minnesota, and International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 160, January 1, 2000 – December 31, 2002; and under the new Collective Bargaining Agreement between the same parties, effective January 1, 2006; and under the jurisdiction of the United States Federal Mediation and Conciliation Service, Washington, D.C., the above Grievance Arbitration [Grievance Arbitration #2] was submitted to Joseph L. Daly on June 28, 2006 in St. Paul, Minnesota.

Post-Hearing Briefs were filed by the parties on July 28, 2006. The decision was rendered by the Arbitrator on August 30, 2006.

ISSUES AT IMPASSE

The Union states the issue as:

1. Whether the Company can adjust the seniority date of Luke Ranvek under the terms of the Collective Bargaining Agreement by reducing by the period of time that he was

wrongfully terminated for purposes of calculating the rate of vacation and sick leave accrual under Article VII of the Collective Bargaining Agreement. [Post-Hearing Brief of Union at 1].

Steele-Waseca Cooperative Electric [Employer] states the issue as:

> At issue is the Collective Bargaining Agreements (CBA) definition of "loss of seniority" vis-a-vis and employee's length of service for purposes of computing vacation accrual. During the June 28 [2006] Hearing, the Employer established that while the CBA is explicit in defining the scenarios under which a loss of seniority can occur, it is silent on a "break-in-service" and its impact on vacation accrual. Hence, Policy 6.025 becomes relevant in defining appropriate treatment of employees. [Post-Hearing Brief of Employer at 2].

FINDINGS OF FACT

1. On December 23, 2002, this Arbitrator issued an award sustaining a grievance brought by the Union claiming wrongful termination of Mr. Luke Ranvek. In fashioning a remedy for Mr. Ranvek, this Arbitrator ruled that Mr. Ranvek's seniority for purposes of the Collective Bargaining Agreement would be calculated from June 5, 2000, the day he first commenced working for the Employer. This Arbitrator also held that the Company was not entitled to treat the period of time that Mr. Ranvek was off work as a result of his non-work-related injuries as "medical leave" under the contract because the Company did not place Mr. Ranvek on medical leave, but instead, solicited his resignation from employment shortly after his car accident injuries. Further, this Arbitrator held that Mr. Ranvek was to receive back pay and benefits starting August 1, 2002, the date he was released by his doctor to return to work.

2. After this Arbitrator issued the December 23, 2002 award, the Employer sought "Clarification and/or Modification" of the award to provide that the period of time that Mr. Ranvek was off work should be treated as medical leave under the contract. This Arbitrator, by letter of January 23, 2003 responded to the Employer's request for "Clarification and/or Modification" of the award by affirming that for purposes of seniority, Mr. Ranvek was deemed to have continuous service from June 5, 2000. In the "Clarification" the Arbitrator held "there was no break in his employment because the

medical leave provision was, in fact, not used by the Employer. Therefore, I determined that Article V, Section 1 (A)(6) was not applicable. Since he began employment on June 5, 2000, Article V, Section 2 applied because the 'medical leave' provision never was put in effect because the Employer refused to discuss the possibility of extending the medical leave, there was no break in seniority and, therefore, no occurrence by which seniority was lost." [Arbitrator clarification letter of January 23, 2003].

3. The previous Collective Bargaining Agreement which expired on December 31, 2005, provided at Article VI:

- Section C: "Employees who have worked more than two years, but less than seven years shall be entitled to vacation of two (2) calendar weeks consisting of eighty (80) hours".
- Section D: "Employees who have worked seven (7) years shall be entitled to vacation of twelve (12) days consisting of ninety-six (96) hours".
- Section E: "Employees that have worked eight (8) through fifteen (15) shall be entitled to a vacation of three calendar weeks consisting of one hundred twenty (120) hours.

The current Collective Bargaining Agreement which became effective as of January 1, 2006, changes and improves the vacation and sick leave accrual provisions. It provides at Article VI:

- Section C: "Employees who have worked more than five (5) but less than fourteen (14) shall be entitled to a vacation of three (3) calendar weeks consisting of one hundred twenty (120) hours". [See generally, Post-Hearing Brief of Union at 3].

Under the new contract, Mr. Ranvek becomes eligible for increased vacation after five years.

4. The basic arguments of the Employer are:

A. "By virtue of the elements of the decision [December 23, 2002 and clarification of January 23, 2003], one would conclude the Arbitrator considered the grievant to not have lost seniority nor employment. However, by installing August 1, 2002 as a date from which back pay and benefits would be calculated, implicit is the fact that the grievant [Mr. Ranvek], while still an employee, must be on some other status";

B. "The concept of "double jeopardy" against the Employer was introduced at the June 28 [2006] hearing [Grievant's Arbitration #2 hearing], not because of the cost to the Employer, but due

to the principle involved. The principle is that in paying out accrued and unused vacation through 2-1-01 to the Grievant, the Employer has satisfied its then-known contractual obligations. To ignore this principle in finally deciding this case would be to render an award which has the effect of modifying the provisions of the CBA";

C. "As with most trades, there is a distinction drawn between 'apprentice' and 'journeyman' with electric cooperatives which is also true of SWCE. It is necessary to pass a journeyman test to advance from the apprentice to the journeyman pay scale. Therefore, it is critical, from a safety perspective, that the specified time to be worked as an apprentice is actually worked to ensure the greatest perspective 'know-how'. To artificially establish the seniority date aborting actual time to be worked as an apprentice creates a safety issue". [Post-Hearing Brief of Employer at 2-3].

5. The basic contentions of the Union are:

A. The Company's contention that the period of time Mr. Ranvek was not working due to injury he was, in fact, on medical leave is without basis in law or contract;

B. In any event, the Company "policy" as written has no application to this dispute;

C. The two situations presented by the Company [Mr. Torrie Kramer and Mr. Don Bos] presented by the Company has justifying its position on the basis of past practice, are not applicable to this situation;

D. Service credit toward vacation accrual rate for non-bargaining unit employment does not support the Employer's actions. [See generally, Post-Hearing Brief of Union at 5-12].

DECISION AND RATIONALE

This Arbitrator in December 2002, and again by clarification on January 23, 2003, determined that there was no break in Mr. Ranvek's employment "because the medical leave provision was, in fact, not used by the Employer". [Letter of Clarification from Arbitrator dated January 23, 2003]. Since Mr. Ranvek began employment on June 5, 2000, Article V, Section 2 of the Collective Bargaining Agreement applied because the "medical leave" provision never was put in effect.

With respect to the Employer being required to pay for Mr. Ranvek's COBRA benefits, "because the Employer violated the contract, the only way to put Mr. Ranvek in a position he was before the violation of the contract is to require the Employer to pay for his out-of-pocket COBRA benefits". [Id.]

Even though it is clear that Mr. Ranvek was off work for more than one year, a time when medical leave would surely have begun, this Arbitrator held that the Company was not entitled to use the "medical leave" provisions of the Collective Bargaining Agreement as a basis for terminating Mr. Ranvek's seniority because it never put him on "medical leave" in the first place. Accordingly, this Arbitrator held that Mr. Ranvek's time off was not to be considered medical leave under the terms of the Collective Bargaining Agreement. As an equitable remedy, this Arbitrator provided that Mr. Ranvek would be given a seniority date which reflected his initial date of hire so he would lose no seniority by virtue of the contractual violations of the Company.

This Arbitrator fashioned specific "legal" and "equitable" remedies in the December 23, 2002 award. "[E]quity may … be a factor in the formulation of a remedy" in a labor arbitration proceeding. Elkouri and Elkouri, *How Arbitration Works 6th Edition*, 482 (The Bureau of National Affairs 2003). This Arbitrator fashioned an award which allowed the Company not to pay health and welfare benefits for Mr. Ranvek until he was released to return to work after the injury. But this Arbitrator continued to fashion a further remedy which required the Company to reimburse Mr. Ranvek for COBRA payments which he would not have had to make had the Company followed the terms of the Collective Bargaining Agreement and not terminated him until he had a chance to claim all his rights under the CBA. In other words, this Arbitrator crafted a contractual and equitable award which made Mr. Ranvek whole with respect to the contract provisions he could/might have enjoyed had the Company not terminated him without just cause.

Regardless of the application of contractual "medical leave" benefits to other employees under different facts and circumstances, the "medical leave" benefits do not apply to Mr. Ranvek's factual situation based upon the award and the legal and equitable remedies this Arbitrator fashioned based on

the specific facts on this case. Mr. Ranvek was not on "medical leave" when he was terminated without just cause. Therefore, this Arbitrator determined that his seniority date is from the time he began employment on June 5, 2000.

The Board of Directors has the right to adopt company policy. But company policy can not contravene the provisions of a Collective Bargaining Agreement; nor can the policy be used to change an award of an Arbitrator made under the terms of the Collective Bargaining Agreement. Even if the Company policy is in direct contradiction to the Arbitrator's award, the Arbitrator's award is based on the Collective Bargaining Agreement and draws its essence from the Collective Bargaining Agreement. Even if the Company policy is directly contrary to the Collective Bargaining Agreement, the Collective Bargaining Agreement is applicable in this situation concerning Mr. Ranvek.

It is held that the Company must adjust Mr. Luke Ranvek's seniority date to June 5, 2000 and must calculate the rate of vacation and sick leave accrual from the seniority date of June 5, 2000 based on Article VII of the Collective Bargaining Agreement.

Both the Union and the Employer mutually agreed to waive "functus officio" for purposes of allowing this Arbitrator to resolve this dispute arising from the original December 23, 2002 Arbitration award. The Employer's interpretation of the December 23, 2002 Arbitration award - that August 1, 2002 is the seniority date for Mr. Ranvek - is incorrect. June 5, 2000 is the date of seniority to determine accrual of benefits for Mr. Ranvek. The grievance of Mr. Ranvek concerning the date of seniority is granted. For all future reference, Mr. Luke Ranvek's seniority date is June 5, 2000.

Dated: August 30, 2006.

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Joseph L. Daly
Arbitrator